

**Perpetual
Injunction When
Granted
and
When Refused**

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“Every trial is a voyage of discovery in which truth is the quest”

Introduction:

Most of the civil litigation in the lower courts is either for injunction or for declaration, or for recovery of possession, and consequential injunction. As such, the officers who are presiding over it should have comprehensive understanding of the subject for proper administration of justice. Section 9 of C.P.C contemplates that the courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Section 15 of CPC contemplates that every suit shall be instituted in the court of the lowest grade competent to try it. And Section 16 of the CPC contemplates that the suits have to be instituted where the immovable property is situated. Therefore, most of the suits for injunction and declaration with or without consequential reliefs would be initiated in lower courts only. In other words it can be said that all the cases of injunctions and declarations with or without consequential reliefs would be initially dealt with by the court of the lowest grade only.

Part III of Chapter VIII of the Specific Relief Act, C.P.C and also the Easements Act etc deal with injunctions. Injunctions may be temporary or permanent . Temporary injunctions are dealt with under Or39 R1 & R2 ,and Section 94(c) and (e) of the Code of Civil Procedure, under which the Court may in order to prevent the ends of justice from being defeated grant a temporary injunction or make such other interlocutory order as may appear to the Court to be just and convenient. Therefore, one of the most important reliefs generally dealt by the civil courts are perpetual injunction, Which is governed by specific provisions, viz are section 37(2), 38 and 41 of specif relief act. It is highly impossible to list out the circumstances under which one can avail the relief of injunction, it is a volatile, depending upon the circumstances and wisdom of the person seeking it. Today, we are going to discuss what is meant by perpetual injunction, when it can be and can't be granted **is dealt with** hereafter in detail to the extent possible. With this brief introduction we will navigate into the subject.

Perpetual Injunction meaning:

Injunctions are preventive reliefs in general. It directs a party to the proceedings to do or not to do a certain act. The words 'perpetual injunctions' were not defined in any statute. So, we have to see the general dictionary meaning of it. The word perpetual is originated from a Latin terms "perpes-perpet " & "perpetuus" which means continues, and continuing throughout.

The dictionary meaning of injunction is :

1: the act or an instance of enjoining : order, admonition.

2: a writ granted by a court of equity whereby one is required to do or to refrain from doing a specified act.

It is a judicial order that restrains a person from beginning or continuing an action, threatening, invading the legal right of another, or that compels a person to carry out a certain act. Perpetual injunction means permanently restraining a person to do or not to do any act. It can be traced in sub section 2 of section 37 of S.R.Act. Permanent injunctions will be dealt with in chapter VII of Part III under sections 36 to 42 of SR Act. While deciding perpetual injunctions, section 38 and 41 have to be read together as they are supplementing each other. Because, the former describes when it can be granted and later when it can't be . Now we will go through with the relevant provisions.

Section 37 (2) of Specific relief Act:

Section 37 (2), A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right or from an act, which would be contrary to the rights of the plaintiff. If we analyze the section, a perpetual injunction can be granted only after a full fledged trial, on merits by way of decree either it may be contested or by ex parte. By way of such decree, the court permanently prohibits the defendant from claiming a particular right or doing a particular act in violation of the rights of the plaintiff. Generally, the injunctions are right in "personam" and not right in "rem" . The maxim "*actio personalis moritur cum persona*" is limited to certain class of cases, of damages and personal actions. If the remedy of injunction granted by a decree is in respect of any heritable and partible right, it does not get extinguished with the death of a party thereto, but enures to the

benefit of the legal heirs of the decree-holder, as such a decree could be executed against the successor-in-interest of the deceased judgment-debtor as well. Since, injunctions run with the person, if the person against whom the decree was obtained sold away the property subsequently, decree holder is not entitled to file execution petition U/O21 R 32 of CPC against subsequent purchaser if he violates the decree. But its binding on the LRS by virtue of Section 50 of CPC. If the property was purchased while the proceedings(proceedings includes Appeals or execution or revision) were pending then it binds the vendee by virtue of S 52 of TPAAct . The Hon'ble Apex Court discussed the case law right from Vithal v. Sakharam (1899) 1 Bom LR 854 till the date of decision ie 20-02-2017, observed as above in a decision reported in 2018 (1) L.S.page 6 Between S.C.Prabhakara Adiga And Gowri and Ors

Section 38 of SRAct

Section 38 of the Specific Relief Act deals with, when and how the perpetual injunctions can be granted in favour of the plaintiff. Now we will go through with section 38 of the Specific Relief Act.

38. Perpetual injunction when granted.—

- (1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.
- (2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.
- (3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of property, the court may grant a perpetual injunction in the following cases, namely:—
 - (a) where the defendant is trustee of the property for the plaintiff;
 - (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
 - (c) where the invasion is such that compensation in money would not afford adequate relief;

- (d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

If we analyze the section, it begins with "subject to other provisions contained in or referred by chapter III" therefore, the powers of the courts in granting the relief of perpetual injunction under section 38 were controlled by sections 39 to 42. One can not go with section 38 of SR Act in isolation while granting the relief of perpetual injunction, and the cautions enumerated in the above sections has to be taken in to consideration.

The first point that requires for obtaining injunction, there must be an obligation and breach of it. The said obligation may be express or implied. The next one is, if the said obligation is by virtue of a contract, the courts have to follow chapter II of S.R. Act I.e section 9 to 25 which deals with specific performance of contract. The third and ultimate one which enables the court to grant perpetual injunction is when the defendant disturbs or tries to disturb the plaintiff's right or enjoyment, being entrusted by the plaintiff for specific purpose to look after the property on his behalf, or there is no scale to measure the loss that is going to be caused to him and cannot be compensated with money and also to avoid multiplicity of the judicial proceedings. If the plaintiff fulfills the above requirements then the court has to grant the relief of perpetual injunction. Therefore, for granting perpetual injunction one must have the overall /understanding/knowledge of sections 9 to 25, and 38 to 42, depending upon the facts and circumstances of the case. In other words, more than half of the litigation before trial courts running around 42 sections of the specific relief act.

Injunction to prevent breach of obligation:

The first and foremost requirement to seek injunction is the existence of a right in the applicant, corresponding obligation on the part of the opposite party and infringement or threat. The court has no jurisdiction to grant injunction to restrain an act which inflicts no legal wrong on the plaintiffs. Therefore, for obtaining injunction an obligation should exist in favour of plaintiff . Now we will see what is obligation.

Obligation:

The word obligation was defined in clause (a)of section 2 of SRAct as under (a) "obligation" includes every duty enforceable by law; so its wide enough to

embrace all sorts of legal duties. In order to entitle the plaintiff to obtain an injunction, there must be an invasion or threatened invasion of the plaintiff's right to or enjoyment of property. Simply because the enjoyment of the plaintiff is rendered less beneficial that would not entitle him to obtain an injunction unless he can show that there is a legal duty on the part of the defendant towards him and that by non-performance of that legal duty the enjoyment of his property is materially affected.

Procedure and proof.

Pleadings play pivotal role in civil litigation, it almost equals to a foundation for constructing a building, if one lays proper foundation then he can construct a multi storied building if not, it may collapse at any stage. At the time of preparing pleadings the parties have to take all the precautions required. The parties are not permitted to travel beyond their pleadings and are not permitted to withdraw any admissions made in the pleadings subsequently. The pleadings go a long way, unless they plead, and prove they won't get the desired reliefs. The way the facts are pleaded decides the burden of proving the facts. The burden of proof is always on the plaintiff to prove his case. Since the relief will be granted to plaintiff only if he succeeds in the suit. One other thing in casting the burden on the plaintiff, it is always the duty of the person who alleges existence of certain thing and positive things only can be proved.

Perpetual injunctions are equitable reliefs, a person who seeks the equitable relief of injunction have to come to court with clean hands, has to stand on his own strength and should not depend upon the weakness in the case or the defense put forth by opposite party. The first and foremost requirement of the person, who seek the relief should be in possession of the property or enjoying the right, which must be a legal one and not illegal. The Hon'ble Apex court In the case of **Maria Margarida Sequeria Fernandes and Others v. Erasmo Jack de Sequeria (Dead) through L.Rs.** AIR 2012 SC 1727, had laid stress on purity of pleadings in civil cases in paras 61 to 79 enumerated broad guidelines to avoid and not to encourage unwanted litigation, as under.

"61. In civil cases, pleadings are extremely important for ascertaining the title and possession of the property in question.

62. Possession is an incidence of ownership and can be transferred by the owner of an immovable property to another such as in a mortgage or lease. A licensee holds possession on behalf of the owner.

63. Possession is important when there are no title documents and other relevant records before the Court, but, once the documents and records of title come before the Court, it is the title which has to be looked at first and due weightage be given to it. Possession cannot be considered in vacuum.

64. There is a presumption that possession of a person, other than the owner, if at all it is to be called possession, is permissive on behalf of the title-holder. Further, possession of the past is one thing, and the right to remain or continue in future is another thing. It is the latter which is usually more in controversy than the former, and it is the latter which has seen much abuse and misuse before the Courts.

65. A suit can be filed by the title holder for recovery of possession or it can be one for ejection of an ex-lessee or for mandatory injunction requiring a person to remove himself or it can be a suit under Section 6 of the Specific Relief Act to recover possession.

66. A title suit for possession has two parts - first, adjudication of title, and second, adjudication of possession. If the title dispute is removed and the title is established in one or the other, then, in effect, it becomes a suit for ejection where the defendant must plead and prove why he must not be ejected.

67. In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession.

68. In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title holder's claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the Court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

69. The person averring a right to continue in possession shall, as far as possible, give a detailed particularized specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.

70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive.

a) who is or are the owner or owners of the property;

b) title of the property;

c) who is in possession of the title documents

d) identity of the claimant or claimants to possession;

e) the date of entry into possession;

f) how he came into possession - whether he purchased the property or inherited or got the same in gift or by any other method;

g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, license fee or lease amount;

h) if taken on rent, license fee or lease - then insist on rent deed, license deed or lease deed;

i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants etc.;

j) subsequent conduct, i.e., any event which might have extinguished his entitlement to possession or caused shift therein; and

k) basis of his claim that not to deliver possession but continue in possession.

71. Apart from these pleadings, the Court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the Court must carefully and critically examine pleadings and documents.

72. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

73. Discovery and production of documents and answers to interrogatories, together with an approach of considering what in ordinary course of human affairs is more likely to have been the probability, will prevent many a false claims or defences from sailing beyond the stage for issues.

74. If the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject the claim or pass a decree on admission.

75. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.

76. In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about who was the owner, on what date did he enter into possession, in what capacity and in what manner did he conduct his relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in

possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence.

77. XXXX XXXX XXXX

78. The Court must ensure that pleadings of a case must contain sufficient particulars. Insistence on details reduces the ability to put forward a non-existent or false claim or defence.

79. In dealing with a civil case, pleadings, title documents and relevant records play a vital role and that would ordinarily decide the fate of the case."

It is a well settled law, that any amount of evidence without pleadings is of no use, and courts have to see that the unnecessary and irrelevant evidence should not to be let in during the trial by utilizing powers vested under section 165 of Indian evidence Act, to the extent possible. Hon'ble Apex court in Bachhaj Nahar vs Nilima Mandal & Ors AIR2009 SC 1103 at paras 11 and 12 held as under:

"The principle was reiterated by this Court in Ram Sarup Gupta (dead) by LRs., vs. Bishun Narain Inter College [AIR 1987 SC 1242]: "It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of pleadings, instead the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings, parties knew the case and they proceeded to trial on those issue by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal."

[emphasis supplied]

12. It is thus clear that a case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific terms, contains the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue

and had led evidence thereon. As the very requirements indicate, this should be only in exceptional cases where the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the parties being conscious of the issue, had led evidence on such issue. But where the court is not satisfied that such case was at issue, the question of resorting to the exception to the general rule does not arise. The principles laid down in Bhagwati Prasad and Ram Sarup Gupta (supra) referred to above and several other decisions of this Court following the same cannot be construed as diluting the well settled principle that without pleadings and issues, evidence cannot be considered to make out a new case which is not pleaded. Another aspect to be noticed, is that the court can consider such a case not specifically pleaded, only when one of the parties raises the same at the stage of arguments by contending that the pleadings and issues are sufficient to make out a particular case and that the parties proceeded on that basis and had led evidence on that case. Where neither party puts forth such a contention, the court cannot obviously make out such a case not pleaded, suo moto."

In view of the above legal possession, the courts have to take care while conducting trial. If the Court has over all understanding over the facts, procedural aspects, relevant provisions of the Evidence Act, then the court can see that the admissible and relevant evidence can only be let in. The courts are permitting the parties to adduce secondary evidence without laying proper foundation as contemplated in S 65 of the Evidence Act. Similarly, courts have to take care of the stamp duty penalty, even for collateral purpose of proving possession and severance of status, party has to pay stamp duty penalty. The court has to specifically mention the nature of collateral purpose for which the document is received while admitting in to evidence.

Whenever the reliefs were sought against a statutory body, the said statutory body should be shown as a party. If not it is not tenable under law, as its legal in nature, it can be taken at any stage even if parties failed to take such plea at initial stages. The Hon'ble High court in a decision reported in **2014 (4)A LD 713 Between Medikonda Sambasiva Rao and another And Panchayat Secretary, Grampanchayat and ors** held at para 10 as under.

"[10] It is evident from the cause title, that the appellants claimed the relief against the Secretary of Gram Panchayat, and not Gram Panchayat, as such. It is too well known that the Gram Panchayat is a creature under the A.P.Gram Panchayat Act, since replaced by A.P.Panchayat Raj Act. Whenever, citizen intends to claim relief against Gram Panchayat, it is that very statutory body, which must be shown as a party. The Gram Panchayat may be represented by Sarpanch, or Panchayat Secretary, depending on the facts and circumstances of the case. However, claiming relief against the Secretary, without making the Gram Panchayat, a party, becomes untenable in law. Though this objection was not raised in the suit or in the appeal, it can be taken into account, at this stage also, being purely legal in nature."

Possession under agreement of sale :

It is a well settled law that in a suit for mere injunction the court can not inquire into the title of the party and can only go into incidentally, only to prove the nature of possession. In general, parties approaching the court claiming possession under unregistered agreement of sale. As per sec 49 of Registration Act, an unregistered document which requires registration can not be received in evidence for proving its contents but, it can be received for collateral transaction which does not require registration. If the possession was delivered in pursuance of an agreement with clear intention that the vendee can enjoy it as owner without having any restrictions, it is adverse to the vendor . The Hon'ble Apex Court in **Achal Reddi vs Ramakrishna Reddiar And Ors 1990 AIR(SC) 553** in paragraph 9 held as under.

"[9] In the case of an executory contract of sale where the transferee is put in possession of the property in pursuance of the agreement of sale and where the parties contemplate the execution of a regular registered sale deed the animus of the purchase throughout is that he is in possession of the property belonging to the title has to be perfected by a duly executed registered deed of sale under which the vendor has to pass on and convey his title. The purchaser's possession such cases is of a derivative character and in clear recognition of and in acknowledgement of the title of the vendor. The position is different in the case where in pursuance of an oral transfer or a deed of transfer not registered the owner of a property transfers the, property and puts the transferee in possession with the clear animus and on the distinct understanding that from that time onwards he shall have no right of title to the property. In such a case the owner of the property does not retain any vestige of right in regard to the property and his mental attitude towards the property is that it has ceased to belong to him altogether. The transferee after getting into possession retains the same with the clean animus that he has become the absolute owner of the property and in complete negation of any right or title of the transferor, his enjoyment is solely as owner in his right and not derivatively or in recognition of the title of any person. So far as the vendor is concerned both in mind and actual conduct there is a total divestiture of all his right, title and interest in the property. This applies only in a case where there is a clear manifestation of the intention of the owner to divest himself of the right over the property. On the other hand in the case of an executory contract the possession of the transferee until the date of registration of the conveyance is permissive or derivative and in law is deemed to be on behalf of the owner himself.

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Therefore, a possession delivered under an unregistered agreement of sale is legal possession and it can be protected under perpetual injunction.

Entries in revenue records& Land revenue receipt:

Though the entries in revenue records did not confer any title, but they will prove the possession of the person, whose name is entered in revenue records. The entries in revenue records and land revenue receipts are public documents, as such, unless the contrary is proved, they will be treated as genuine. The Honble High Court of AP reported in 1998 (2) ALT 623 between Yeluri Vijayabharathi And Ors. vs Yeluri Manikyamma And Ors at para 8, relying the Judgment of Apex Court reported in 1995 AIR (SC) 1377 Between Nagar Palika, Jind And Jagat Singh, and privy council Nirman Singh v. Lal Rudra Pratap AIR 1926 P.C. 100., at para 8 held as under:

"8. Mr. Haranath, the learned Advocate is not right in contending that the entries in the Record of Rights register should be taken as the basis to fix the title. Although the entries in the Record of Rights register enjoy the presumption in law that the entries are true unless the contrary is proved and may not be discredited, the records of rights are no records of documents of title. Such a question has been clearly dealt with by the Hon'ble Supreme Court in Nagarpalika, jind v. Jagat Singh and following Nirman Singh v. Lal Rudra Pratap AIR 1926 P.C. 100, it has been held that such documents are more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with greater confidence that the revenue for it will be paid. In other words, the records of rights are the documents ensuring the person to be made liable to pay the revenue and for no other purpose. However, it may not be hastened to be added that such entries have got corroborative value regarding the possession of a party in regard to an immovable property. "

Construction of building in violation of Rules

Plaintiff brings a suit to restrain the defendant by an injunction from constructing a building on defendant's plot on the ground that the said construction is in violation of the Municipal Rules as to buildings. The suit is not maintainable because no right of the plaintiff as such is violated. It is only if the privation of light amounts to an actionable nuisance then Plaintiff can sue. It was fortified by a decision of division bench of Hon'ble High court of Calcutta reported in A.I.R. 1977 Cal. Page 174. Between Lalit Mohan And. Samirendra Kumar, and also Bhagirathi v. Anantanarayan, A.I.R. 1981 Ori. 58. Even if the defendant has constructed his building violating Municipal rules, the plaintiff cannot obtain injunction without proving material injury.

Right of Easement.

An easement is a right to use other's property, the owner of a particular land enjoys an adjacent property which he does not possess, It is the right over a property belonging to someone else and not to the person claiming easement. A landowner's benefit from a property which is not his own, and over which he has a right is called a dominant heritage or dominant tenement, and owner of such land is called dominant owner. Dominant because the owner has control over the use of that particular land which he does not possess. In case where another person has a right over a part of the property of a land owner is called servient tenement and owner of such a land is called servient owner. Servient or subordinate because he has to abide by the requirements and convenience of the dominant owner. In fact whether he likes it or not, it is a burden he is forced to bear by grant custom or by prescription.

Where the right of pathway is not disputed by the defendants, mere fact that there is a defense raised by defendant that he had no intention of obstruction does not dispel the threat of interference that has been caused in the mind of plaintiff. Threat of interference itself is enough to grant injunction. It was fortified by a decision reported in **1998 (5) Kar LJ page 168 Between Romeo M.F. Aquinas and Others And Florina Mothias and Another .**

If Plaintiff established his legal rights of easement and the fact of its disturbance, plaintiff is entitled to permanent injunction without proof of substantial damage **AIR 1972 PATNA Page 490 Between Sarab Lall Jha And Anr. vs Ucheshwar Jha And Ors .**

Where suit property is a common passage then in the absence of any specific pleadings as to easement by necessity or easement by prescription relief of permanent injunction cannot be granted it was fortified by a decision reported in **2017 (part 3) AIR KAR 305 Between Sri Venkataraju And Smt Tara Aiyappa.**

Even if customary of right of privacy is proved an injunction cannot be granted unless it is established that there has been a substantial infringement of right of privacy it was fortified by a decision reported in **1978 MPLJ 204 Abirchand Gulabchan Jain And Manik Ramanrain Tailor and Another.**

If a person who has uninterruptedly enjoyed the right of light and air for long over 20 years acquires a right of easement which cannot be taken away by another person by raising any construction which may seriously affect those rights. If his

rights to enjoyment are infringed, then he is entitled to sue for the enforcement of right under section 26 of limitation act when there is no other plea urged in bar of the enjoyment of those rights it was fortified by a decision reported in AIR 1958 ASSAM 83 , AIR 1978 NOC 275. 1978 (4)All LR 712 Raja Ram And Rama Kant Singh.

Nuisance.

An act which is harmful or offensive to the public or a member of it and for which there is a legal remedy can be said as nuisance. Before an injunction can be issued, the plaintiff must prove that the nuisance to which he objects is an actionable one and that it is apprehended to cause substantial injury to his property. The word substantial when used with reference to an injury caused are likely to be caused any nuisance only means actual or real as opposed to trivial, no serious, temporary, occasional, unimportant, imaginary or seeming. It was fortified by a decision reported in AIR 1958 Allahabad 335 at page 339 Between Raj Singh And Ch. Gajraj Singh .

Running of a rice mill near house of party report of commissioner appointed by court showing that running of rice mill was causing vibrations in compound wall of house of party, sound was emanated by running of mill and husk was settling on house of party in view of said report oral evidence lead in by both parties loosing its importance - fact that party did not object running of old rice mill which was away from house of party does not establish that the party was acquainted with such nuisance - nuisance established by the court commissioner was actionable nuisance and fit case to grant mandatory injunction restraining opposite party from running rice mill It was fortified by a decision reported in 1994 (3) ALT page 306 at 317 page Annabathuni Sravana Kumar And ... vs Puvvada Suvarnalatha.

Injunction against co-owner.

The co-owner cannot claim an order of injunction against another co-owner with regard to the property owned jointly because possession of one co-owner would be treated to be possession of all. The Honble Justice PS.Narayana in "Law of Injunctions" at page 177 while dealing with the "Rights and liabilities of co-owners", the principles laid down in different authorities had been discussed as follows:

- (1) A co-owner has an interest in the whole of property and also in every parcel of it;
- (2) Possession of the joint property by one co-owner is in the eye of law, possession of all even if all but one are actually out of possession;
- (3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all;
- (4) The above rule admits of an exception when there is ouster of co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other, as when a co-owner openly asserts his own title and denies that of the other;
- (5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment;
- (6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners;
- (7) Where a co-owner is in possession of parcels under an arrangement consented to by the other co-owners, it is not open to any one to disturb the arrangement without the consent of others except by filing a suit for partition;
- (8) The remedy of a co-owner of a share in the joint property, is by way of a suit for partition or for actual joint possession but not for ejectment. Same is the case where a co-owner sets up an exclusive title in himself;
- (9) Where a portion of the joint property is by common consent of the co-owners, reserved for a particular common purpose, it cannot be diverted to an inconsistent use by a co-owner if he does so, he is liable to be ejected and the particular parcel will be liable to be restored to its original condition. It is not necessary in such a case to show that special damage has been suffered."

The Hon'ble Apex court in a decision reported in **AIR 1956 SC 548 Between Mohammad Baqar and others And. Naim-un-Nisa Bibi and others.** has very categorically held in para No. 7 as under:

"The parties to the action are co-sharers, and as under the law, possession of one co-sharer is possession of all co-sharers, it cannot be adverse to them, unless there is a denial of their right to their knowledge by the person in possession, and exclusion and ouster following thereon for the statutory period." "Similarly, the legal position that the co-owner or co-sharer of the property can never claim ownership by adverse possession of the other share. This is also a well settled law."

Injunction against true owner.

As per Section 41(j) of the Specific Relief Act, injunction cannot be granted against the true owner. However, a person in settled possession though unlawful, dispossession even by true owner is to be by resorting to due process of law. The Honble Apex court in a case reported in AIR 2004 (SC) Between Rame Gowda (D) By Lrs And M. Varadappa Naidu (D) By Lrs. & Anr at paragraph 9 held as under,

"9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram and Ors. Vs. Delhi Administration (1968) 2 SCR 455, Puran Singh and Ors. Vs. The State of Punjab (1975) 4 SCC 518 and Ram Rattan and Ors. Vs. State of Uttar Pradesh (1977) 1 SCC 188. The authorities need not be multiplied. In Munshi Ram & Ors.'s case (supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re-instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In Puran Singh and Ors.'s case (supra), the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase 'settled possession' does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession' :

i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

iv) that one of the usual tests to determine the quality of settled possession, in the case of cultural land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession."

Injunction against minor.

Injunction against minor persay is not a ground for refusing injunction, but it has to be proved that the acts were done by him or on his behalf. The suit for injunction is not maintainable without showing the minor as party to the suit.

Infringement of public rights and the right to the office is invaded:

The rights that were being used by public like using of public passage, worship in temple, using the village graveyard, organizing processions performing pooja and other religious rights in temple basing on customary and traditional right to perform religious right and ritual to exclusion of others such rights are infringed a perpetual injunction is maintainable.

Permanent injunction against obstruction to peaceful enjoyment of office premises and suit was filed 2 years after enjoyment was obstructed by denying acts to plaintiff dismissal of suit on ground of delay for reasons that in action for a period of 2 years resulted in extinction of present position is improper that could be a ground for interim relief **AIR 2004 supreme court page 909 Madhusoodhan And Keralakaumudi Pvt Ltd.**

The municipal committee cannot use the public street any other manner except as public street. Thus, where the plaintiff vested right of enjoyment of way on public street on same was interfered with by the municipal committee by leasing out a part of public street to respondents the plaintiff would be entitled to maintain a suit for permanent injunction against the committee. **1991 Civil court cases 567 @ page 517 Punjab and Haryana Between Amarnath And Beliram.**

Where the municipality constructed a platform having height of 2 feet by the side of public street which caused obstruction to easy access to the shops on the road side by the public and the shopkeepers a mandatory injunction could be issued to the municipality to remove the construction fact that the construction was done in good faith to prevent unlawful hocking and unauthorized assembly would be immaterial 1996 AIHC 4494 @ page 4498 (MAD) .

Discretionary relief:

The person who seeks the equitable relief has to come to court with clean hands and should not be guilty of suppression of material facts. Though it is not incumbent on the part of plaintiff to plead the evidence but material facts which is necessary to prove case have to be pleaded. Equitable reliefs are discretionary reliefs it should not be granted or refused formally. They have to be based on sound settled legal principles but it should not be arbitrary and whims and fancies.

The Hon'ble Apex Court in Kanchusthabam Satyanarayana & ... vs Namuduri Atchutaramayya & Ors 2005 AIR(SC) 2010 held as under

"The grant of discretionary relief such as injunction being in the nature of equitable relief must be granted inter alia on consideration of equity and justice, and the Appellant who is himself guilty of inequitable conduct cannot claim such relief -Where the Appellant himself had invoked the jurisdiction of the authorities under the Andhra Pradesh Tenancy Act seeking eviction of the respondent who was his tenant, though the eviction application was allowed by the original authority and the Appellant was put in possession of the suit land, his appeal was dismissed and an order was passed for restitution, it was not this stage the Appellant invoked the writ jurisdiction of the High Court to stay the proceedings, and when he failed before the High Court he filed a suit for injunction for restraining the Respondent tenant from interfering with his possession of the suit land -Held -equitable relief of the nature asked for in the suit in question should not have been granted in favour of the Appellant so as to defeat the order of restitution passed by the revenue authorities and the Tenancy Act whose jurisdiction under the Tenancy Act was invoked by the Appellant himself and no interference by the Supreme Court in exercise of jurisdiction under Article 136 was called for"

The Honourable Apex court In Shanmugam vs Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai sangam rep By Its President etc.AIR 2012 SC 2010 (paras 67 to 71

"67. *In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a*

person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession.

68. In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title-holder's claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

69. The person averring a right to continue in possession shall, as far as possible, give a detailed particularized specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.

70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive:

- (a) who is or are the owner or owners of the property;
- (b) title of the property;
- (c) who is in possession of the title documents;
- (d) identity of the claimant or claimants to possession;
- (e) the date of entry into possession;
- (f) how he came into possession—whether he purchased the property or inherited or got the same in gift or by any other method;
- (g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, licence fee or lease amount;
- (h) if taken on rent, licence fee or lease—then insist on rent deed, licence deed or lease deed;
- (i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants, etc;
- (j) subsequent conduct i.e. any event which might have extinguished his entitlement to possession or caused shift therein; and
- (k) basis of his claim that not to deliver possession but continue in possession.

71. Apart from these pleadings, the court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the

threshold, the court must carefully and critically examine the pleadings and documents."

Section 41. of S.R Act Injunction when refused:

Section 41 of SR Act is self-explanatory it enumerates the circumstances in which injunction can not be granted. As such, I am only placing some decisions of Apex court on the said aspects .

An injunction cannot be granted —

- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to restrain any person from instituting or prosecuting any proceeding in a court not sub-ordinate to that from which the injunction is sought;
- (c) to restrain any person from applying to any legislative body;
- (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
- (e) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (g) to prevent a continuing breach in which the plaintiff has acquiesced;
- (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust; 1[

(h[a]) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.]

- (i) when the conduct of the plaintiff or his agents has been such as to dis-entitle him to be the assistance of the court;
- (j) when the plaintiff has no personal interest in the matter.

Marriage was held under Hindu marriage act in India, later Wife and husband became Overseas Citizens of India, Husband filed suit for desolation of marriage in India, after appearance, wife filed for divorce petition in USA on the ground of the marriage was irrevocable break down, which was not a ground

for obtain divorce in USA. Later husband filed suit in India for stay of proceedings and obtained interim injunction orders which was challenged before Hon'ble High court the Hon'ble High court allowed it against which the husband approached the Hon;ble Apex Court while dealing the same the Hoble Apex court discussed Sec 41(a), Sec 41, Sec 37, Sec 41(b), Sec 38 of SR Act in **Dinesh Singh Thakur vs Sonal Thakur** reported in **2018 AIR(SC) 2094** and observed as under in paragraphs 9 and 10 and upheld the decision of the Hon'ble High court.

[9] Anti-Suit Injunctions are meant to restrain a party to a suit/proceeding from instituting or prosecuting a case in another court, including a foreign court. Simply put, an anti-suit injunction is a judicial order restraining one party from prosecuting a case in another court outside its jurisdiction. The principles governing grant of injunction are common to that of granting anti-suit injunction. The cases of injunction are basically governed by the doctrine of equity.

[10] It is a well-settled law that the courts in India have power to issue anti-suit injunction to a party over whom it has personal jurisdiction, in an appropriate case. However, before passing the order of anti-suit injunction, courts should be very cautious and careful, and it should be granted sparingly and not as a matter of routine as such orders involve a court impinging on the jurisdiction of another court, which is not entertained very easily specially when the it restrains the parties from instituting or continuing a case in a foreign court".

The Honble Apex court discussed the scope and ambit of Sec41 (b) of SR Act in detail with reference to case law **in Cotton Corporation Of India vs United Industrial Bank 1983 AIR 1272, 1983 SCR (3) 962** Held as under

"The equitable principle underlying Section 41(b) is that access to court in search of justice according to law is the right of a person who complains of infringement of his legally protected interest and a fortiori therefore, no other court can by its action impede access to justice, except the superior court which can injunct a person by restraining him from instituting or prosecuting a proceeding before a subordinate court. A subordinate court is precluded from granting an injunction restraining any person from instituting or prosecuting any proceeding in a court of coordinate or superior jurisdiction. Section 41 (b) has curtailed the power to grant injunction in person. Moreover, Section 41(b) was enacted in order to avoid the inevitable multiplicity of proceedings.

Section 41(b) must receive such interpretation as would advance the intendment, and thwart the mischief it was enacted to suppress, and so keep the path of access to justice through court unobstructed access to justice must not be hampered even at the hands of judiciary.

The expression 'injunction' in Section 41 (b) is not qualified by an adjective and therefore, it would comprehend both interim and

perpetual injunction. Temporary injunction is granted during the pendency of the proceeding so that while granting final relief the court is not faced with a situation that the relief becomes infructuous or that during the pendency of the proceeding an unfair advantage is not taken by the party in default or against whom temporary injunction is sought. But power to grant temporary injunction was conferred in aid or as auxiliary to the final relief that may be granted. If the final relief cannot be granted in terms as prayed for, temporary relief in the same terms can hardly if ever be granted.

There is a clear bar in Section 41(b) against granting the relief. The Court has no jurisdiction to grant a perpetual injunction restraining a person from instituting a proceeding in a court not subordinate to it, as a relief, ipso facto temporary relief cannot be granted in the same term. The interim relief could obviously be not granted also because the object behind granting interim relief is to maintain status quo ante so that the final relief could be appropriately moulded without the party's position being altered during the pendency of the proceedings.

There was no justification for this dichotomy introduced by the court in respect of various proceedings which were open to the Corporation to be taken against the Bank leaving some open and some restrained by injunction. Neither in statute law nor in equity, there is any justification for this dichotomy.

The Hon'ble apex court discussed the provision of section 37,41, 41 (e)etc of SR Act in Best Sellers Retail (india) Pvt. Ltd. Vs. Aditya Birla Nuvo Ltd. & ors. Reported in 2012 AIR(SC) 2448

"Specific performance of contract of agency - suit for breach committed by agent of its warranty and retained suit premises till expiry of contract - plaintiff filed application for injunction to restrain defendant from encumbering suit property - plaintiff also claimed damages in alternate to relief of specific performance - injunction granted - contended that plaintiff will suffer irreparable loss if injunction is not granted - though plaintiff has prima facie case, it was not proper to grant injunction - when damages are claimed, it cannot be said that plaintiff will suffer irreparable loss if injunction is not granted - High Court lost sight of fact that if temporary injunction restraining Liberty Agencies and its partners from allowing, leasing, sub-leasing or encumbering suit schedule property was not granted, and respondent no.1 ultimately succeeded in suit, it would be entitled to damages claimed and proved before court - order of temporary injunction passed by lower Courts set aside - appeals allowed.

The Hon'ble Apex Court discussed the provision Section 41(h) of S.R.Act in .Municipal Corporation of Delhi v. Suresh Chandra Jaipuria and Anr(F.B.) reported in 1976 AIR(SC) 2621

"Alternate remedy -- Effect of discretionary relief of injunction should not be granted. An injunction, which is a discretionary equitable relief, cannot be granted when an equally efficacious relief is obtainable in any other usual mode or proceeding except in cases of breach of trust. This

consideration also has a bearing upon the question whether a prima facie case exists for the grant of an interim injunction."

The Hon'ble Apex Court discussed the provision Section 41(i) of S.R.Act in **Zarina Siddiqui v. A. Ramalingam alias R. Amarnathan reported in 2014 AIR SCW 6614** in para 35 asunder.

41(i)-Conduct of party-Party denying existence of registered deeds and also denying receipt of advance consideration-Held, If a party to a lis doesn't disclose all material facts truly and fairly but pleads them in a distorted manner to mislead the court then the court has inherent power to prevent abuse of process of law by refusing the relief

"Para35. In the instant case, as noticed above, although defendant no.2 held a registered power of attorney on behalf of defendant no.1 to sell and dispose of the property, but the defendants not only made a false statement on affidavit that the power of attorney had authorized the second defendant only to look after and manage the property but also withheld the said power of attorney from the Court in order to misguide the Court from truth of the facts. Further, by registered agreement the defendants agreed to sell the suit premises after receiving advance consideration but they denied the existence of the agreement in their pleading. Such conduct of the defendants in our opinion, disentitle them to ask the Court for exercising discretion in their favour by refusing to grant a decree for specific performance. Further, if a party to a lis does not disclose all material facts truly and fairly but states them in distorted manner and mislead the Court, the Court has inherent power to exercise its discretionary jurisdiction in order to prevent abuse of the process of law. "

The Hon'ble Apex Court discussed the provision Section 41(h) of S.R.Act **Premji Ratansey Shah v. Union of India , reported in (1994) 5 SCC D.B.)**

" Injunction cannot be issued against a true owner in favour of a trespasser or a person who is in unlawful possession -- Since issuance of injunction is absolutely a discretionary and equitable relief, the injunction may be issued to protect the possession of the owner or the person in lawful possession.It is equally settled law that injunction cannot be issued against the true owner. Therefore, the courts below rightly rejected the relief of decalration and injunction in favour of the petitioner who had no interest int the property. Even assuming that they had any possession, their possession was wholly unlawful and they were in possession as trespasser and therefore, injunction could not be issued in favour of a trespasser or a person who gained unlawful possession as against the owner"

Conclusion.

One of the most powerful, effective and frequently granted relief by a civil court is injunction. At the same time, to the same extent being misused by

unscrupulous litigants also is the relief of injunction. Its a steroid, if used within the limits as prescribed, it will heal the unsolvable health problems and if used in unrestricted dosages, it will destroy the health leading to death. Therefore, the courts have to take all cautions while dealing with the relief of perpetual injunctions. The officers while conducting trial have to see that unnecessary, irrelevant and inadmissible evidence does not go in to the record, which ultimately consumes lot of judicial working hours of courts . The Hon'ble Apex Court in a decision reported in **AIR 2012 SC 2010 Between A. Shanmugam And Ariya K.R.K.M.N.P. Sangam** in paragraph 21 observed as under.

“21. This case demonstrates widely prevalent state of affairs where litigants raise disputes and cause litigation and then obstruct the progress of the case only because they stand to gain by doing so. It is a matter of common experience that the Court's otherwise scarce resources are spent in dealing with non-deserving cases and unfortunately those who were waiting in the queue for justice in genuine cases usually suffer. This case is a typical example of delayed administration of civil justice in our Courts. A small suit, where the appellant was directed to be evicted from the premises in 1994, took 17 years before the matter was decided by the High Court. Unscrupulous litigants are encouraged to file frivolous cases to take undue advantage of the judicial system.” .

To avoid such an unpleasant situation the courts have to be more versed with procedural aspects from the stage of institution of suit till its delivering judgment by using the powers vested with the courts ,to meet the ends of justice and to raise the occasion when ever arises.

The Hon'ble Apex court in **Maria Margarida Sequeria Fernandes and Others v. Erasmo Jack de Sequeria (Dead) through L.Rs.** AIR 2012 SC 1727 in paragraphs 31 to 52 observed as follows reiterating the care cautions to be taken to find out the truth.

"31. In this unfortunate litigation, the Court's serious endeavour has to be to find out where in fact the truth lies. The truth should be the guiding star in the entire judicial process.

32. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty.

33. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.

34. In *Mohanlal Shamji Soni v. Union of India* 1991 Supp (1) SCC 271, this Court observed that in such a situation a question that arises for consideration is whether the presiding officer of a Court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice? It is a well accepted and settled principle that a Court must discharge its statutory functions-whether discretionary or obligatory-according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done.

35. What people expect is that the Court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.

36. In *Ritesh Tewari and Another v. State of Uttar Pradesh and Others* (2010) 10 SCC 677 this Court reproduced often quoted quotation which reads as under:

"Every trial is a voyage of discovery in which truth is the quest"

37. This Court observed that the power is to be exercised with an object to subserve the cause of justice and public interest and for getting the evidence in aid of a just decision and to uphold the truth.

38. Lord Denning, in the case of *Jones v. National Coal Board* [1957] 2 QB 55 has observed that:

"In the system of trial that we evolved in this country, the Judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of the society at large, as happens, we believe, in some foreign countries."

39. Certainly, the above, is not true of the Indian Judicial System. A judge in the Indian System has to be regarded as failing to exercise his jurisdiction and thereby discharging his judicial duty, if in the guise of remaining neutral, he opts to remain passive to the proceedings before him. He has to always keep in mind that "every trial is a voyage of discovery in which truth is the quest". In order to bring on record the relevant fact, he has to play an active role; no doubt within the bounds of the statutorily defined procedural law.

40. Lord Denning further observed in the said case of *Jones* (supra) that "It's all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth..."

41. World over, modern procedural Codes are increasingly relying on full disclosure by the parties. Managerial powers of the Judge are being deployed to ensure that the scope of the factual controversy is minimized.

42. In civil cases, adherence to Section 30 CPC would also help in ascertaining the truth. It seems that this provision which ought to be frequently used is rarely pressed in service by our judicial officers and judges. Section 30 CPC reads as under:-

30. Power to order discovery and the like. - Subject to such conditions and limitations as may be prescribed, the Court may, at any time either of its own motion or on the application of any party, -

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summons to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

c) order any fact to be proved by affidavit

43. "Satyameva Jayate" (Literally: "Truth Stands Invincible") is a mantra from the ancient scripture Mundaka Upanishad. Upon independence of India, it was adopted as the national motto of India. It is inscribed in Devanagari script at the base of the national emblem. The meaning of full mantra is as follows:

"Truth alone triumphs; not falsehood. Through truth the divine path is spread out by which the sages whose desires have been completely fulfilled, reach where that supreme treasure of Truth resides."

44. Malimath Committee on Judicial Reforms heavily relied on the fact that in discovering truth, the judges of all Courts need to play an active role. The Committee observed thus:

2.2..... In the adversarial system truth is supposed to emerge from the respective versions of the facts presented by the prosecution and the defence before a neutral judge. The judge acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable doubt. The State discharges the obligation to protect life, liberty and property of the citizens by taking suitable preventive and punitive measures which also serve the object of preventing private retribution so essential for maintenance of peace and law and order in the society doubt and gives the benefit of doubt to the accused. It is the parties that determine the scope of dispute and decide largely, autonomously and in a selective manner on the evidence that they decide to present to the court. The trial is oral, continuous and confrontational. The parties use cross-examination of witnesses to undermine the opposing case and to discover information the other side has not brought out. The judge in his anxiety to maintain his position of neutrality never takes any initiative to discover truth. He does not correct the aberrations in the investigation or in the matter of production of evidence before court....." 2.15 "The Adversarial System lacks dynamism because it has no lofty ideal to inspire. It has not been entrusted with a positive duty to discover truth as in the Inquisitorial System. When the investigation is perfunctory or ineffective, Judges

seldom take any initiative to remedy the situation. During the trial, the Judges do not bother if relevant evidence is not produced and plays a passive role as he has no duty to search for truth...." 2.16.9. Truth being the cherished ideal and ethos of India, pursuit of truth should be the guiding star of the Criminal Justice System. For justice to be done truth must prevail. It is truth that must protect the innocent and it is truth that must be the basis to punish the guilty. Truth is the very soul of justice. Therefore truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the courts to become active seekers of truth. It is of seminal importance to inject vitality into our system if we have to regain the lost confidence of the people. Concern for and duty to seek truth should not become the limited concern of the courts. It should become the paramount duty of everyone to assist the court in its quest for truth.

45. In Chandra Shashi v. Anil Kumar Verma (1995) 1 SCC 421 to enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre- variation and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in Courts when they would find that truth alone triumphs in Courts.

46. Truth has been foundation of other judicial systems, such as, the United States of America, the United Kingdom and other countries.

47. In James v. Giles et al. v. State of Maryland 386 U.S. 66 (1967) 87, S.Ct. 793, the US Supreme Court, in ruling on the conduct of prosecution in suppressing evidence favourable to the defendants and use of perjured testimony held that such rules existed for a purpose as a necessary component of the search for truth and justice that judges, like prosecutors must undertake. It further held that the State's obligation under the Due Process Clause "is not to convict, but to see that so far as possible, truth emerges."

48. The obligation to pursue truth has been carried to extremes. Thus, in United States v. J. Lee Havens 446 U.S. 620, 100 St.Ct.1912, it was held that the government may use illegally obtained evidence to impeach a defendant's fraudulent statements during cross-examination for the purpose of seeking justice, for the purpose of "arriving at the truth, which is a fundamental goal of our legal system".

49. Justice Cardozo in his widely read and appreciated book "The Nature of the Judicial Process" discusses the role of the judges. The relevant part is reproduced as under:-

"There has been a certain lack of candour," "in much of the discussion of the theme [of judges' humanity], or rather perhaps in the refusal to discuss it, as if judges must lose respect and confidence by the reminder that they are subject to human limitations." I do not doubt the grandeur of conception which lifts them into the realm of pure reason, above and beyond the sweep of perturbing and deflecting forces. None the less, if there is anything of reality in my analysis of the judicial process, they

do not stand aloof on these chill and distant heights; and we shall not help the cause of truth by acting and speaking as if they do."

50. Aharon Barak, President of Israeli Supreme Court from 1995 to 2006 takes the position that:

"For issues in which stability is actually more important than the substance of the solution - and there are many such cases - I will join the majority, without restating my dissent each time. Only when my dissenting opinion reflects an issue that is central for me - that goes to the core of my role as a judge - will I not capitulate, and will I continue to restate my dissenting opinion: "Truth or stability - truth is preferable".

"On the contrary, public confidence means ruling according to the law and according to the judge's conscience, whatever the attitude of the public may be. Public confidence means giving expression to history, not to hysteria. Public confidence is ensured by the recognition that the judge is doing justice within the framework of the law and its provisions. Judges must act - inside and outside the court - in a manner that preserves public confidence in them. They must understand that judging is not merely a job but a way of life. It is a way of life that does not include the pursuit of material wealth or publicity; it is a way of life based on spiritual wealth; it is a way of life that includes an objective and impartial search for truth."

51. In the administration of justice, judges and lawyers play equal roles. Like judges, lawyers also must ensure that truth triumphs in the administration of justice.

52. Truth is the foundation of justice. It must be the endeavor of all the judicial officers and judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth."